

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ESPERANZA CORRAL, et al.,

Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC, et al.,

Defendants.

Case No. 16-cv-00964-EMC

**CORRECTED ORDER DENYING  
PLAINTIFFS' EX PARTE  
APPLICATION FOR A TEMPORARY  
RESTRAINING ORDER**

Docket No. 2

On February 26, 2016, Plaintiffs Esperanza Corral and Diana Balgas moved ex parte for a temporary restraining order (TRO) restraining and enjoining Defendants Nationstar Mortgage LLC, Wells Fargo Bank, N.A., and Bank of America, N.A. from foreclosing on Plaintiffs' residential home, scheduled for February 29, 2016. Docket No. 2 (TRO App.). For the reasons discussed below, the Court **DENIES** Plaintiffs' motion for a TRO.

First, Plaintiffs fail to satisfy Local Rule 65-1(b), which requires that "counsel applying for the temporary restraining order must deliver notice of such motion to opposing counsel or party." Upon closer review of the filings, Plaintiffs indicate that they "executed" notice by mailing notice of the ex parte motion to Defendants' registered agents today, as well as e-mailing a request to Defendant Wells Fargo to push back the foreclosure sale (without specifying who the request was made to and whether that individual could receive service on the part of Wells Fargo). Docket No. 2-2 at ¶¶ 2-4. The Court does not consider this to be adequate notice, given the unlikelihood that any Defendant would receive the ex parte motion in time to file a meaningful opposition before the close of business. This is especially the case when Plaintiffs filed their application in the late afternoon, on the Friday before the foreclosure sale is to take place. Plaintiffs have also wholly failed to allege specific facts demonstrating when they became aware of the foreclosure sale date

1 and why they could not have pursued injunctive relief before this late date. In fact, many of the  
 2 allegations in the complaint strongly suggest that Plaintiffs were long-aware of the alleged  
 3 discrimination, as Plaintiffs allege that they have been attempting to obtain a loan modification  
 4 since 2009, and were “frequently” subject to discriminatory behavior. *See* Docket No. 1 (Compl.)  
 5 at ¶¶ 17, 20. Plaintiffs’ failure to adequately explain this last-minute request for emergency relief  
 6 further requires that their request be denied. *See Purugan v. HSBC Bank USA, Nat’l Ass’n*, No. C-  
 7 12-5168-SBA, 2012 U.S. Dist. LEXIS 146539, at \*1 (N.D. Cal. Oct. 10, 2012) (“Plaintiffs offer  
 8 no explanation why they waited until only a week before the sale date to seek a TRO without  
 9 notice. As such, any exigency is of Plaintiff’s own making.”).

10 Second, Plaintiffs do not satisfy the requirements for a temporary restraining order. “A  
 11 plaintiff seeking a [TRO] must establish that he is likely to succeed on the merits, that he is likely  
 12 to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in  
 13 his favor, and that an injunction is in the public interest.” *Network Automation, Inc. v. Advanced*  
 14 *Sys. Concepts*, 638 F.3d 1137, 1144 (9th Cir. 2011) (quoting *Winter v. Natural Res. Defense*  
 15 *Council, Inc.*, 555 U.S. 7 (2008)). Here, Plaintiffs have failed to show a likelihood of success, as  
 16 their complaint makes only limited allegations of discrimination based on race and sexual  
 17 orientation.<sup>1</sup> Compl. at ¶¶ 20-22. Plaintiffs provide no specific facts or instances of  
 18 discrimination, or even explain which of the Defendants engaged in the alleged discriminatory  
 19 behavior. Plaintiffs also allege no facts demonstrating disparate impact, such as their  
 20 qualifications for a loan. *See Merritt v. Countrywide Fin. Corp.*, Case No. 09-cv-1179-BLF, 2015  
 21 U.S. Dist. LEXIS 125284, at \*58-59 (N.D. Cal. Sept. 17, 2015) (dismissing discrimination claims  
 22 under the Fair Housing Act and Equal Opportunity Credit Act because to show disparate  
 23 treatment, Plaintiffs must allege facts establishing that they were qualified for a loan, which they  
 24 had failed to do). The lack of any specific facts in the instant complaint does not satisfy the  
 25 federal pleading standards, which requires that a complaint allege sufficient facts to support a  
 26 cognizable legal theory. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678-79; *Bell Atl. Corp. v. Twombly*,  
 27 550 U.S. 544 (2007). Plaintiffs’ TRO motion fares no better; it simply recites these bare-bone

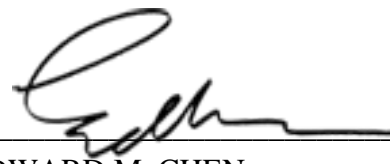
28 <sup>1</sup> Plaintiffs make no allegations of discrimination based on gender, despite alleging that Defendants engaged in gender discrimination.

1 facts, with no additional support. Such bare facts suggest that Plaintiffs do not have a serious  
2 claim of discrimination that warrants a TRO.

3 For these reasons, the Court **DENIES** Plaintiffs' motion for a temporary restraining order.  
4 This order is without prejudice for a motion for a preliminary injunction, properly served on  
5 Defendants.

6  
7 **IT IS SO ORDERED.**

8  
9 Dated: February 26, 2016



EDWARD M. CHEN  
United States District Judge